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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LESTER CHU, EDWIN HARADA, DOUGLAS HEATHERLY,
TIMOTHY MAHONEY, JAMES MESSINA, and JAMES PALMA

Appeal 2009-002739
Application 10/801,156
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH
A. FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-36, 38-47, and 49-51. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Claims 37 and 48 have been canceled.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for distributing information, including the ability to enhance or modify the display of such information listings, making identification easier by potential customers and more effective for information providers (Specification ¶¶ [0036], [0037]).

Claim 1 is representative of the subject matter on appeal.

1. An information distribution system, comprising:
 - a sponsor subsystem, said sponsor subsystem including:
 - a plurality of listing attributes;
 - a plurality of listings, wherein each listing includes at least one listing attribute,
 - wherein said plurality of listings include an enhanced listing; and
 - a plurality of format attributes, including a first format attribute and a second format attribute, wherein said first format attribute is associated with said enhanced listing and wherein said second format attribute is associated with at least one said listing that is not said enhanced listing;
 - a user subsystem, said user subsystem including:

a request, said user subsystem providing for the receipt of said request; and
a response, said user subsystem providing for said response;
and
an administrator subsystem, said administrator subsystem including:
a response heuristic, said response heuristic providing for selectively identifying a subset of said listings to be included in said response, wherein said subset of listings includes said enhanced listing;
a plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric;
an enhanced display fee, wherein said enhanced display fee is associated with said enhanced listing; and
a placement heuristic, wherein said placement heuristic provides for arranging said subset of listings within said response, wherein the placement of each said listing is influenced by at least one said priority metric associated with said listing, and wherein the placement of said enhanced listing is not influenced by said enhanced display fee.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Talib	US 2001/0044837 A1	Nov. 22, 2001
Littlefield	US 6,564,208 B1	May 13, 2003
Might	US 2003/0177076 A1	Sep. 18, 2003
Mangold	US 2004/0186769 A1	Sep. 23, 2004
Veach	US 2004/0267612 A1	Dec. 30, 2004
Jha	US 2005/0033641 A1	Feb. 10, 2005

Anon., "Intasys Corporation Subsidiaries Mamma.com Ic. And Intasys Billing Technologies Comment on Q3 2001 Results Discuss Recent Events," Business Wire, October 31, 2001

Helen, posting on alt.windows98, September 7, 2002.

Kanell, M.E., "Personal Technology Bellsouth Putting Yellow Pages Online," Atlanta Journal-Constitution, Business section, p 5, April 20, 1997.

The following rejections are before us for review.

The Examiner rejected claims 1-6, 10, 13-17, 19-24, 30-32, 44-47, 49, and 51 under 35 U.S.C. 103(a) as being unpatentable over Littlefield.

The Examiner rejected claims 7, 18, 25, and 39-43 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Official Notice.

The Examiner rejected claim 8 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Helen.

The Examiner rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Veach.

The Examiner rejected claims 11 and 12 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Might.

The Examiner rejected claims 26-29 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Talib.

The Examiner rejected claim 33 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Mangold.

The Examiner rejected claim 34 under 35 U.S.C. 103(a) as being unpatentable over Littlefield, Mangold, and Anonymous.

The Examiner rejected claims 35 and 36 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Jha.

The Examiner rejected claims 38 and 50 under 35 U.S.C. 103(a) as being unpatentable over Littlefield and Kanell.

ISSUES

Did the Examiner err in rejecting claims 1-6, 10, 13-17, 19-24, 30-32, 44-47, 49, and 51 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Littlefield on the grounds that a person with ordinary skill in the art would understand that since Littlefield discloses that the amount charged by the search engine controller may vary based on a variety of factors, including the size and type of the non-default items that web page owners desire to have as listings for their pages, that Littlefield discloses an *enhanced display fee, wherein said enhanced display fee is associated with said enhanced listing?*

Did the Examiner err in rejecting claims 1-6, 10, 13-17, 19-24, 30-32, 44-47, 49, and 51 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Littlefield on the grounds that a person with ordinary skill in the art would understand that since Littlefield discloses only influencing the placement of a listing ranking based on satisfying a user's interests, that Littlefield discloses *wherein the placement of said enhanced listing is not influenced by said enhanced display fee?*

Did the Examiner err in rejecting claims 1-6, 10, 13-17, 19-24, 30-32, 44-47, 49, and 51 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Littlefield on the grounds that a person with ordinary skill in the art would understand that since Littlefield discloses a *priority metric* which determines the order of listings based on their relevance to the request made by a user, and that the order “usually” takes the form of a ranking most likely to satisfy the interest specified by the user, that Littlefield therefore discloses a *plurality of priority metrics, wherein each listing in said response is associated with at least one said priority metric?*

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Examiner found that Littlefield teaches or suggests an enhanced display fee:

Examiner reiterates that Littlefield does disclose an enhanced display fee, only a little lower in column 4 (lines 24-47), where Littlefield clearly and expressly discloses extra fees for including "non-default items" in listings, the "non-default items" being enhancements to the listings, such as company logos, having the listing shown in bold, in a particular font, or in a font of a certain size.

(Answer 24).

2. The Specification does not define the term “enhanced display fee.”

3. The Specification describes an enhanced display fee by way of example in stating:

The following listing attributes 106 are examples of potential bases for charging some type of enhanced display fee of the listing: (a) length of text (as measured in characters, words, sentences, or any other metric); (b) font size; (c) font type; (d) incorporation of graphics; (e) incorporation of color; (f) incorporation of animation; (g) an interactivity opportunity; (h) a detailed view; or (i) any other mechanism that calls more attention to the listing 104.

(Specification ¶ [00235]).

4. Littlefield discloses an enhanced display fee in that, “[t]he amount charged by the search engine controller may vary based on a variety of factors, including the size and type of the non-default items that web page owners desire to associate with the search result listings for their pages.” (Col. 4 ll. 6-9).

5. Littlefield discloses that an enhanced display fee for a “non-default item” may be for “...images, banners, controls, animations, and even applets in the JAVA language ...” (Col. 3 ll. 15-18).

6. Littlefield discloses a method to determine the order of search results listings based on satisfying the interest specified by the user, stating:

Typically, the search engine orders the search results prior to presenting the search results interface to the user. The order usually takes the form of a “ranking”, where the document with the highest ranking is the document considered most

likely to satisfy the interest reflected in the search criteria specified by the user. The specific techniques for determining that ranking will vary from implementation to implementation....

(Col. 2 ll. 8-15).

7. Littlefield does not disclose that search order results placement is influenced by the payment of fees for the enhancement of the appearance of any listing.

8. The Specification describes the term *priority metric* as a calculation to determine the order in which to display listings in that “[a] priority metric 179 can be used by the placement heuristic 174 to identify the desired order of various listings 104. The inputs for the calculation of the priority metric 179 can include virtually any of the listing attributes 106 and request attributes 134 relating to the listing 104.” (Specification ¶ [0215]).

9. Littlefield discloses a per-hit fee amount, where the enhanced display fee is included as part of said per-hit fee amount associated with said enhanced listing in that the “search engine provider may also charge click-through fees based on how many times the search engine users actually select a search result listing that is associated with a non-default item.” (Col 4. ll. 11-14).

10. The Specification describes fee type attributes in the context of either fees for enhanced listings are charged on a fixed/subscription or per-click/per-hit basis, stating:

Fee type attributes 112 relate to financial characteristics of the listing 104 with respect to

processing performed by the system 100. For example, some listings 104 can involve charging the advertiser 102 each time a particular listing is presented in a response 144 to a request 132. Such an arrangement can be referred to as a per-hit fee amount 113 where a per-hit payment offered by the advertiser is deducted with each "hit" of the listing. ...

Another example of a type attribute 112 is a fixed-fee amount 111. In contrast to a per-hit fee amount 113, listings 104 of the fixed-fee type 111 do not result in advertisers 102 being charged on a per-hit basis. Instead, fixed-fee type listings 104 result in a set subscription charge for a period of time.

(Specification ¶ [0139-0140]).

11. Littlefield discloses a plurality of fee type attributes where the enhanced display fee associated with the enhanced listing is influenced by the fee type attributes and click-through/per-hit fees for enhanced or non-default content:

The amount charged by the search engine controller may vary based on a variety of factors, including the size and type of the non-default items that web page owners desire to associate with the search result listings for their pages. Instead of or in addition to a subscription fee for associating non-default items with search result listings, search engine provider may also charge click-through fees based on how many times the search engine users actually select a search result listing that is associated with a non-default item.

(Col. 4 ll. 6-14).

12. Littlefield discloses that the detailed view of an enhanced or non-default listing requires an affirmative invocation through the user interface before displaying in that, “[a] typical use of such non-default items would be to entice the search engine user to select the associated page.” (Col. 6 ll. 9-11).

13. Littlefield provides a visual example of an enhanced display/non-default listing which requires an affirmative invocation through the user interface before displaying at the element 150a portrayal of a web-based uniform record locator (URL) for the PALM website that the user must select in order to view the “Palm Computing” content (Fig. 1B).

Excerpt of Littlefield Figure 1B



An excerpt of Figure 1B showing an enhanced listing requiring invocation

14. Talib discloses that an enhanced display fee associated with an enhanced listing/advertisement is influenced by a category attribute, *i.e.*, such as a health insurance category, with which the listing may be associated:

If a business wants its advertisement to be seen whenever a user is attempting to locate a pharmacy, a publisher may charge a fee of \$1.00. Each time a user selects the "Location" taxonomy 7002 the user would see an ad corresponding to this search level. If, however, a business only

wants to advertise when a user is seeking information on health insurance, then the publisher may charge a higher amount, say \$2.00 to allow ad 7000 to be displayed when a user clicks on the category "Health Insurance & Information" 7004.

(¶ [0111]).

15. Intasys discloses wherein the number of hits and period of time influence the variable per-hit fee in that, "an advertiser is not charged for multiple click throughs from the same IP address within a 24-hour period." (Pg. 1).

16. Littlefield discloses advertiser interface providing for the selection of at least one enhanced attribute and at least one enhanced display fee with an optional fee for an optional display attribute, in that, "Instead of or in addition to web-page-specific subscriptions, a mechanism is provided which allows domain-specific subscriptions. For example, a company may have registered the domain mycompany.com. The company could obtain a subscription that associates a graphic representing the logo of the company with the domain name." (Col. 4 ll. 56-61).

17. Kanell discloses that a user may pay to have an Internet-based Yellow Pages listing appear in a particular listing category:

In a move the company hopes will profitably propel its Yellow Pages business into the Internet age, BellSouth today launches an online version of its listings that will be free to anyone with a computer and a Net Connection. ... You can seek out a particular business by name, or search by category (hardware stores, radio stations,

restaurants, etc.). You can often narrow that by clicking, for example, on Restaurants Italian or Greek or Kosher. (One caveat: A business has to pay to be listed in more than one, so don't assume it will be in each place it could logically be listed.)

(¶ 3, 5).

18. The Examiner found that Kanell discloses “businesses paying for enhancements in the online Yellow Pages similar to those in the printed Yellow Pages, where companies can pay for bold-faced listings and large box ads that include more information ads.” (Ans. 23).

19. The Specification describes that request attributes can include selections of geography, subject category, and more, because “...request attributes 134 inputted to the group determination process can include one or more geography selections 136, one or more category selections 138, and any other attribute types relating to the request 132.” (¶ [00286]).

20. The Specification describes that “[r]equest attributes 134 can include text describing the product, such as brand information.” (¶ [00399]).

21. Littlefield discloses that providing users with the option to pay for enhanced listings would discourage users from trying to alter the order of search results listings, in that, “By providing web page owners the ability to compete for the attention of the users of a search engine through the use of non-default content, the incentive for those web page owners to employ artificial means to obtain higher search rankings is reduced. Consequently, the integrity and accuracy of search engine results may improve.” (Col. 4 ll. 15-20).

ANALYSIS

We affirm the rejections of claims 1-36, 38-47, and 49-51.

Claims 1 and 44

Initially, we note that the Appellants argue independent claims 1 and 44 together as a group. Correspondingly, we select representative claim 1 to decide the appeal of these claims, with the remaining claim 44 standing or falling with claim 1. Appellants do not provide a substantive argument as to the separate patentability of claims 2-5, 7, 10, 13-17, 19, 21-24, 30-32, 45, 47, and 49 that depend from claims 1 and 44. Thus, claims 2-5, 7, 10, 13-17, 19, 21-24, 30-32, 45, 47, and 49 stand or fall with claims 1 and 44. See, 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Initially, we note that Appellants assert that the “Examiner’s Answer did not address” the argument that “Littlefield fails to teach or suggest an ‘enhanced display fee.’” (Reply Br. 2). We do not agree with this assertion, because we note that the Examiner addressed the argument by making a finding which addressed this issue. (FF 1).

We also are not persuaded by Appellants’ underlying argument that “nowhere does Littlefield teach or suggest an ‘enhanced display fee.’” (Appeal Br. 24). We find that the Specification does not define the term *enhanced display fee* (FF 2). The Specification describes the term only by way of example, as a basis for charging an *enhanced display fee* for any number of listing characteristics, including the use of graphics, animation,

and interactive opportunity (FF 3). Thus, an *enhanced display* fee need only be a basis for charging for listing characteristics.

We next find that Littlefield discloses that “[t]he amount charged by the search engine controller may vary based on a variety of factors, including the size and type of the non-default items that web page owners desire to associate with the search result listings for their pages” (FF 4). Since those non-default items may include graphics, animation, and interactive opportunity, which are included in the Specification as enhanced display fee characteristics (FF 5), Littlefield meets the claim limitation *enhanced display fee, wherein said enhanced display fee is associated with said enhanced listing*. We note that although Littlefield does not utilize the term *enhanced listing* fee, it nevertheless discloses payment for enhanced display fee charges; anticipation “is not an ‘*ipsissimis verbis*’ test”, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832-33 (Fed. Cir. 1990) (citing *Akzo N.V. v. U. S. Int’l Trade Comm’n*, 808 F.2d 1471, 1479 n.11 (Fed. Cir. 1986)). “An anticipatory reference ... need not duplicate word for word what is in the claims.” *Standard Havens Prods., Inc., v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

Appellants next argue “Littlefield does not ... in any way teach or suggest ‘the placement of the enhanced listing is not influenced by the enhanced display fee.’” (Appeal Br. 24).

We are not persuaded by Appellants’ argument here for the following reasons. First, Littlefield only explicitly discloses that the placement of

listings is influenced based on satisfying a user's interests (FF 6). Further, we find that Littlefield does not make any disclosure or suggestion that fees paid to enhance the display appearance of a listing (i.e. the *enhanced display fee*) have influence over the placement of the listing (FF 7). While there is no assurance that all enhanced listing placements would not be influenced by enhanced display fees, we nevertheless base our findings on what is explicitly disclosed in Littlefield - namely that listing ranking is based on users' interests. Since the rejection is made under 35 U.S.C. § 103(a), and even if we were to assume some listings were so influenced, other listings would still not be, and thus the claim requirement would be met by the listings which were not so influenced.

Appellants argue "Littlefield fails to teach or suggest any criteria for ranking other than the general idea of user interest, much less does Littlefield teach or suggest 'a priority metric'" because "at most Littlefield discloses a 'ranking,' not 'a plurality of priority metrics'" (Appeal Br. 25-26).

We disagree with Appellants on both assertions. First, we interpret *priority metric* to be a broad term associated with determining the order in which listings are displayed. We find in the Specification that a *priority metric* can be based on inputs which comprise attributes of a search request made by a user, including a requested geography, requested subject category, requested brand information or "virtually any" attribute of the search request made by the user (FF 19, 20). Correspondingly, we find that Littlefield discloses determining the order of listings based on the listing

results most likely to satisfy the user's listing request (FF 6). We thus find that the Appellants' request attributes would be tied to user satisfaction because the user is satisfied when desired information is found on the Internet.

Claim 39

Independent claim 39 is argued by reference to the arguments of claim 1. Since the disputed claim element is common to claim 1 and addressed above, and claim 39 was rejected using Littlefield, we affirm the rejection of claim 39 under 35 U.S.C. § 103(a) over Littlefield and Official Notice for the same reasons as claim 1.

Claims 6 and 46

Appellants argue that Littlefield "fails to teach or suggest 'wherein the enhanced display fee is part of the per-hit fee'" (Appeal Br. 34), and that Littlefield "teaches away" at least in part because Littlefield additionally discloses a "subscription fee" (Appeal Br. 26, 35).

We are not persuaded by this argument because Littlefield discloses that a "search engine provider may also charge click-through fees based on how many times the search engine users actually select a search result listing that is associated with a non-default item" (FF 9). Thus, the search engine may charge a per-hit fee that includes the fee for any *enhanced*/non-default listing, as required by the claims. Further, Littlefield does not teach away from the claim limitation on the basis of disclosing a subscription fee. Rather, Littlefield states, "[i]nstead of or in addition to a subscription fee for

associating non-default items with search result listings, search engine provider may also charge click-through fees ...” (FF 11). Since Littlefield associates enhanced display fees with either subscription fees or per-hit fees or both, and Littlefield does not advise against associating enhanced display fees with per-hit fees, there is no teaching away. *See In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

Claim 20

Appellants argue “Littlefield fails to teach or suggest ‘said listings displayed by said user subsystem are not displayed in an order that is in accordance with said per-hit fee” because Littlefield “teaches away” (Appeal Br. 27, 35-36).

We are not persuaded by these arguments, because as we found with claim 1, *supra*, Littlefield only discloses ordering based on satisfying the interest specified by the user results, which was not based on the per-hit fee (FF 6, 7), and thus Littlefield’s disclosure meets the claim requirements.

Claim 51

Appellants argue that Littlefield “teaches away” from “‘the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings’ as recited by claim 51.” (Appeal Br. 36). Appellants assert that this is because of “Littlefield’s purported advantage of ‘giving advertisers the ability to compete for attention through enhanced listings’ [that] in fact would have suggested that listings would be displayed in an order in accordance with a per-hit fee, and that an enhanced listing

would give an advertisers the opportunity to compete for attention despite low placement based on a per-hit fee.” (Appeal Br. 36).

We are not persuaded by Appellants’ arguments because, first, as we found with claim 1, *supra*, Littlefield only discloses ordering based on satisfying the interest specified by the user results, which was not based on the per-hit fee (FF 6, 7). Thus, Littlefield’s disclosure meets the claim requirements of the listings in the response are not displayed in accordance with a per-hit fee that is associated with each of the listings.

Second, Appellants assertions are speculative at best because simply disclosing an option of a per-hit fee does not necessarily means that it will be used to order the search results as argued. In fact, Littlefield only explicitly discloses ordering search results based on their likelihood to satisfy the user’s request for the listings (FF 6, 7). Moreover, Littlefield encourages ranking independent of per-hit fees because it discloses “[b]y providing web page owners the ability to compete for the attention of the users of a search engine through the use of non-default content, the incentive for those web page owners to employ artificial means to obtain higher search rankings is reduced.” (FF 21). As such, Littlefield does not teach away because Littlefield discourages artificial means to obtain higher search rankings, such as a per-hit fee arrangement.

Claim 30

Appellants next argue that Littlefield does not teach or suggest that *the enhanced display fee associated with said enhanced listing is influenced*

by *said fee type attribute*, because “Littlefield discloses differences in fees solely based on the attributes of the non-default listing, without influence of the fee type attribute” (Appeal Br. 28-29).

We are not persuaded by this argument because we interpret the term *fee type attribute* to refer to an indicator of the type of fee to charge, which includes fixed/subscription or per-click/per-hit/click-through fees (FF 10). Furthermore, we find that Littlefield discloses that fee types for *enhanced/non-default* listings may include subscription fees or click-through fees, or both, (FF 11), thus meeting the claim limitation.

Claim 8

Appellants argue that the combination of Littlefield and Helen fail to disclose the claim limitations because “Helen teaches at most a single response and not ‘a first response and a second response.’” (Appeal Br. 29).

We are unconvinced by this argument, because claim 8 differs from claim 1, its parent, primarily only by reciting additional instances of *responses*, *priority metrics*, and *listings*. We do not find the plural instances of these elements distinguishes over Littlefield’s single disclosed example of a *response*, *priority metric*, and *listing*, because the plural form is merely a duplication of the same elements. *In re Harza*, 274 F.2d 669, 671 (CCPA 1960) (“It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced ...”).

Claim 18

Appellants disagree with the Examiner's use of Official Notice to meet the claim limitation, *wherein detailed view of said enhanced listing requires an affirmative invocation through said user interface before being displayed through said user interface* (Appeal Br. 30), because Littlefield "teaches away" by "automatically displaying its non-default content" (Appeal Br. 30).

The argument fails because the Appellants have not specifically pointed out the supposed errors in the Examiner's taking of Official Notice, "includ[ing] stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR § 1.111(b)." MPEP § 2144.03(C). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728 (CCPA 1971). That has not been done here. When an Appellant does not seasonably traverse a well-known statement during examination, the object of the well-known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 711 (CCPA 1943).

Furthermore, we find the Examiner's use of Official Notice is cumulative, because Littlefield discloses an example of an *enhanced display/non-default listing* which *requires an affirmative invocation through said user interface before displaying* in Figure 1B at the element 150a.

(FF 12,13). This feature in Littlefield is a web-based uniform record locator (URL) for the PALM website that the user must select in order to view the “Palm Computing” content (FF 13), where the URL is provided with the purpose of enticing the user to affirmatively invoke the URL by selecting it (FF 12), thus meeting the claim limitation.

Claim 27

Appellants next argue that neither Littlefield nor Talib disclose the limitation *wherein said enhanced display fee associated with said enhanced listing is influenced by said category attribute* (Appeal Br. 32).

We disagree with Appellants because Talib discloses charging the user a fee to associate their listing with a category attribute by charging \$1.00 to associate the listing with the search category “pharmacy” and \$2.00 to associate the listing with the search category “health insurance” (FF 14), thus meeting the claim limitation by having the category attribute influence the fee, which one of ordinary skill in the art would understand could be applied to the enhanced display fee of Littlefield.

Claim 34

Appellants argue that the Intasys article does not disclose the limitation *wherein the number of hits and period of time influence the variable per-hit fee* because “the per-hit fee in Intasys remains constant, and is charged only when the system deems the click to be a proper click ...” (Appeal Br. 33).

We are not persuaded by this argument. The Intasys article describes that the advertiser is not charged for multiple clicks from the same user within a 24-hour period (FF 15). Thus, the fee charged for the first click is the usual fee, but the fees for subsequent clicks/hits within 24 hours are varied to zero, thus meeting the claim language.

Claim 42

Appellants argue that Littlefield does not disclose *said advertiser interface providing for the selection of at least one said enhanced attribute and at least one said enhanced display fee*, because “Littlefield discloses no selection of fees ...” (Appeal Br. 33-34).

We disagree with Appellants because Littlefield provides an optional mechanism for an advertiser to select an enhanced display attribute, *i.e.*, a company logo, and a fee, *i.e.* a subscription charge (FF 16), thus meeting the claim language.

Claim 50

Appellants argue that “Kanell discloses that ‘[a] business has to pay to be listed in more than one [category]’” and “companies can pay for bold-faced listings”, but “nowhere does Kanell teach or suggest that ‘enhancements’ do not appear every time, let alone ‘wherein the same listing appears in an enhanced display format in one response without appearing in an enhanced display format in another response.’” (Appeal Br. 37). That is, Appellants argue, Kanell “teaches away” by “indicating, if anything, that

such ‘enhancements’ would be displayed each time a listing in Kanell is displayed.” (Appeal Br. 37).

We find this argument unpersuasive for the following reasons. Littlefield discloses that a user may pay an extra fee to enhance the listing (*e.g.* size, type, graphics, animation, and interactivity opportunity) (FF 4), and Kanell discloses that a user may also pay to have a listing appear in particular listing categories (FF 17). The Examiner found that Kanell discloses BellSouth Yellow Pages (FF 18), and in advertising in Yellow Pages telephone books, that businesses sometimes do not pay for enhanced listings in every subscribed category. (Answer 23-24). Thus, one of ordinary skill in the art would, by inference, understand only paying for enhanced listings in some categories, but not others, meeting the claim language. See *KSR Int’l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). (In making the obviousness determination one “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”)

We also affirm the rejections of dependent claims 9, 11, 12, 25, 26, 28, 29, 33, 35, 36, 38, 40, 41, 43, and 50, since Appellants have not challenged such rejections with any reasonable specificity. See *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1-36, 38-47, and 49-51.

Appeal 2009-002739
Application 10/801,156

DECISION

The decision of the Examiner to reject claims 1-36, 38-47, and 49-51 under 35 U.S.C. § 103(a) is affirmed.

AFFIRMED

MP

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